

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of August, two thousand and six.

PRESENT:

HON. WILFRED FEINBERG,
HON. JON O. NEWMAN,
HON. CHESTER J. STRAUB,
Circuit Judges.

Guang Xian Lin,

Petitioner,

-v.-

No. 04-6505-ag
NAC

U.S. Department of Justice, Attorney General & Immigration
and Naturalization Service,

Respondents.

FOR PETITIONER

Guang Xian Lin, *Pro Se*, Brooklyn, New York.

FOR RESPONDENTS:

Dunn Lampton, United States Attorney for the Southern District
of Mississippi, Alfred B. Jernigan, Jr., Assistant United States
Attorney, Jackson, Mississippi.

UPON DUE CONSIDERATION, of this petition for review of the Board of Immigration

1 Appeals (“BIA”) decision it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DENIED.

3 Guang Xian Lin (No. A 77 539 470) petitions for review of the BIA’s order of November
4 17, 2004 denying his motion to reopen asylum-only proceedings and affirming the September 22,
5 2003 decision of Immigration Judge Theresa Holmes-Simmons. We assume the parties’
6 familiarity with the facts and procedural history of this case.

7 This Court reviews the BIA’s denial of a motion to reopen for abuse of discretion. *See*
8 *Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam). An abuse of discretion may be found
9 where the BIA’s decision “provides no rational explanation, inexplicably departs from
10 established policies, is devoid of any reasoning, or contains only summary or conclusory
11 statements; that is to say, where the Board has acted in an arbitrary or capricious manner.” *Ke*
12 *Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (citations omitted).

13 The BIA did not abuse its discretion in denying Lin’s motion to reopen. The BIA
14 explained that the Population and Family Planning Law was enacted prior to Lin’s September
15 2003 asylum hearing, and that the expert witness affidavit and transcript of related testimony
16 were also available at the time of his asylum hearing. Additionally, the BIA explained that the
17 birth of Lin’s son and the March 2003 Department of State information on country conditions
18 would not likely change the result in this case. Lin’s claim of a well-founded fear of future
19 persecution based on the birth of his first child in the United States is too speculative to succeed
20 given the evidence presented. *See Jian Wen Wang v. BIA*, 437 F.3d 276, 278 (2d Cir. 2006); *cf.*
21 *Jian Xing Huang v. U.S. INS*, 421 F.3d 125, 129 (2d Cir. 2005). Finally, we cannot address the
22 claims Lin raises to this Court based on his recent conversion to Christianity because those

1 claims were never presented to the BIA. *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 343
2 (2d Cir. 2006).

3 For the foregoing reasons, the petition for review is DENIED. The pending motion for a
4 stay of removal in this petition is DENIED as moot.

6 FOR THE COURT:
7 Roseann B. MacKechnie, Clerk

8 By: _____
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